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NATIONAL DEFENSE UNIVERSITY

NATIONAL WAR COLLEGE

WEAPONS OF MASS DESTRUCTION:  
AN UNTIMELY RESPONSE OR MONEY WELL SPENT?

LTC PETER M. AYLWARD/CLASS OF 1999

**COURSE 5603**

SEMINAR L

FACULTY SEMINAR LEADER:

DOCTOR LUCAS

FACULTY ADVISER:

COLONEL SULLIVAN

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## **Introduction**

On November 14, 1994, responding to the Weapons of Mass Destruction threat, President Clinton declared a National Emergency citing an "extraordinary threat to the national security, foreign policy and economy of the United States."<sup>1</sup> Strong words that suggest the need for strong action from the Clinton administration.<sup>2</sup> At risk is our nation's security to the potential terrorist's use of chemical, biological, radiological or nuclear devices – Weapons of Mass Destruction (WMD).

Three years later, in a February 1997 report to the President, the Catastrophic Disaster Response Group concluded that this government is still ill equipped to respond to a WMD event.<sup>3</sup> Government's efforts to craft a comprehensive response have been painfully slow because of bureaucratic politics.<sup>4</sup> These efforts cut across local state, federal jurisdictions, which involve interagency partners at all levels of government. How does our government respond when terrorists employ chemical and biological weapons on our shores? Understanding the dynamics of the players and the process begins with an examination of the threat and how the government responds.

## **The Threat –Terrorists and Time**

Terrorist organizations possessing chemical and biological agents have increased the potential for attacks within our borders.<sup>5</sup> The bombing of the World Trade Center and the Oklahoma City Federal Building dramatized the serious problems which small terrorists groups could cause<sup>6</sup>. Within the last five years at least eleven states have

experienced terrorists incidents<sup>7</sup>. Consequently, the Clinton administration is actively seeking solutions to deal with terrorist inspired domestic threats.

The disaster response system within the United States depends on a tiered mutual support system that is resource constrained. If the event exceeds the local government's capacity then state and federal resources will be needed.<sup>8</sup> Once an incident has occurred the real challenge begins when the responders arrive on scene. If properly equipped, responding to event should be a routine "first responder" emergency.

However, the "first responder" community within this country is woefully ill equipped and unprepared to deal with WMD events.<sup>9</sup> Even more disturbing, federal technical units that can respond properly are limited and remotely located. Unless they are pre-positioned, by the time they arrived on the scene, victim survivability is doubtful. Part of the slow response problem results from the support system between the federal, state and local government, which is constrained by a profusion of statutes and regulations.

### **Statutory and Regulatory Constraints**

Statutory and regulatory constraints attempt to sort jurisdictional, fiscal and interagency responsibilities between the different levels of government. Legal considerations seek to facilitate the response by answering some demanding questions.

Who has jurisdiction responsibility, who pays the bill and who is in charge are three key issues to WMD response.

Legislation that governs WMD response constrains the federal government from entering into state's jurisdiction. Amendment ten to the constitution reserves state's rights. Disaster response is primarily a state function. At the same time, terrorist response is primarily a federal function. In fact, Presidential Decision Directive 39 (PDD-39) entitled "U.S. Policy on Counterterrorism" assigns primary authority to the Federal government to prevent and respond to acts of terrorism.

PDD-39 also provides fiscal guidance.<sup>10</sup> It requires federal agencies to respond to terrorist's incidents or conduct counterterrorists operations and bear the costs of their participation.<sup>11</sup> This is key because, depending on the circumstances, some federal agencies respond under their own authority. For example, the Stafford Act (Public Law 93-288 also known as the Federal Response Plan) establishes the authority and process for "all hazards" response to disasters in the United States. The Federal Response Plan (FRP) is the overarching mechanism for providing disaster relief to state and local authorities. It includes 29 federal departments and agencies that have their own statutory authority to provide government services and support.

In an era of dwindling resources, who pays the bill is just as important as who has jurisdiction responsibility and who is in charge. Jurisdictional issues including who's

in charge and who pays the bill should be resolved before federal responders arrive on the scene. The consequences for not sorting through these legal issues can result in criminal penalties or worse - the agency having to foot the bill. Therefore, Federal partners seek to resolve these issues before they respond to state and local authorities.

### **Local and State Players**

Driven by high public expectations, state and local officials recognize the importance of a cooperative partnership with the federal government. Beyond technical knowledge and expertise, the federal government provides much needed money for local and state response efforts. At the same time, local and state players seek to maintain their autonomy when making decisions under the Incident Command System (ICS).

Local community response to a WMD emergency uses the ICS to ensure a coordinated response. The Incident Commander is often the senior responder (e.g., fire chief, or police chief). Final authority to make on-scene decisions regarding the consequences of the incident, saving lives, casualty treatment, and community evacuation, rests with the local Incident Commander.

If local assets are not sufficient to meet the emergency response requirements, they will request state (or regional) assets through the State Office of Emergency

Services. If the WMD incident were of significant scope and size, the governor could request assistance from the President of the United States.<sup>12</sup>

### **The Federal Players**

When a governor asks for assistance, the federal government responds on the President's behalf. By design, there are three main groups of players who may respond to WMD events. The first two are the FBI and FEMA, highlighted in PDD-39, which provide policy oversight for crisis and consequence management respectively. The third group, responsible for the Domestic Preparedness Program execution, is the Department of Defense (DoD).<sup>13</sup>

To coordinate the federal response policy, the FBI and FEMA have been designated the lead federal agencies to orchestrate the federal response. These efforts are divided into two categories: crisis management and consequence management. Crisis management falls under the purview the FBI.<sup>14</sup> FBI responsibilities include resolving the incident before it happens, investigating the incident once it happens and preparing the case for criminal prosecution.<sup>15</sup>

FEMA is the lead agency for consequence management. Although the effected state and local governments have primary jurisdiction for emergencies, a terrorist attack involving WMD could create havoc beyond their capability to respond. After a request from the governor, FEMA would coordinate consequence management activities

including measures to mitigate damage, restore essential government services and provide emergency assistance. FEMA would implement the Federal Response Plan cooperating with state and local emergency response agencies.<sup>16</sup>

In addition to FEMA and the FBI, DoD also cooperates with state and local emergency response agencies. Essentially, DoD prepares state and local emergency responders through the Domestic Preparedness Program. This Congressionally mandated effort attempts to link DoD's wide range of technical expertise and experience to the first responder community. However, the process to link the two groups together is somewhat unwieldy.

### **Problems and The Evolving Solution**

Two problems inherent in this cumbersome system include training and response. First, emergency planners including specialized hazardous materials teams, currently do not possess the effective testing equipment nor the training to help identify sophisticated chemical or biological warfare agents that might be used in a potential terrorist attack.<sup>17</sup> Second, a time gap exists between the local/state response and the federal response. Expert help that local agencies would need must come from the Center for Disease Control (CDC) in Atlanta, the U.S. Army Medical Research Institute for Infectious Diseases (USAMRIID) at Ft. Derrick, Maryland, or a new specially trained team of U.S. Marines called the Chemical/Biological Incident Response Force (CBIRF).<sup>18</sup>



Unfortunately, it takes considerable time before these highly trained specialists can arrive on the scene. In the mean time, local fire, EMS, police agencies, and hospital personnel will be responsible for the management of the emergency. Recognizing training and response shortfalls, Congress authorized the federal government to improve capabilities to respond to WMD incidents by passing Title XIV also known as the Domestic Preparedness Program. Among other requirements, Title XIV requires the federal government to provide chemical-biological first responder training.<sup>19</sup> A two pronged strategy has been undertaken to provide part of the training and response solution.

First, in an effort to shore up local responder's capability, DoD has been charged with providing training to 120 of the nation's cities. Training provides first responder's skills in early detection of symptoms, quick decontamination techniques and protocols to prevent the spread of the agent outside the incident area. Accordingly, training provides the most critical area for enhancing this nation's ability to respond to a WMD incident.

Second, to fill the gap between state and federal government response, the National Guard has been directed to develop Rapid Assessment Initial Detection teams. Designed to arrive on the scene within hours of an incident, teams of highly trained experts would provide technical advice assistance and support, until the more robust federal response can arrive.<sup>20</sup> Enhanced National Guard capabilities, cut through

statutory and regulatory constraints, provide much needed technical expertise, and close the response gap.

Both efforts are economy of force options that attempt to avoid reinventing the wheel. Yet, collaborating on these training and response options has been slow because each federal institution involved seeks to protect its own self-interests. Arriving at equitable solutions involves pulling, hauling and horse-trading that will stretch the limited discretionary funding made available by Congress.

### **Special Interests**

Vying for the limited discretionary funding made available by Congress, federal players provide parochial views on solving the problem while serving their state and local special interests. These solutions generally underscore the benefits of using their organization's unique capabilities. The FBI, FEMA and DoD have all been guilty of bureaucratic politics that exploits existing programs, policies and capabilities with an eye on the funding available from Congress.

To that end, each organization leverages the unique aspects of their state and local counterparts. First, the FBI underscores its role as the federal crisis manager. The FBI provides solutions that highlight the unique FBI and local law enforcement relationships. Second, given the lead on Consequence Management, FEMA (who runs the firefighter academy) provides solutions and training that highlight the unique FEMA

and fire fighters' relationships. Third, DoD targeted the constitutionally unique state and federal dual-status role of the National Guard to fill the gap between the local/state response and the follow-on federal response. This also provides a partial solution to Quadrennial Defense Review cuts to the National Guard by providing relevance to force structure that was deemed irrelevant.

Engaged in bureaucratic politics the interagency partners will continue to press their own self-interests. Congressionally scrutiny in the aftermath of Government Accounting Office audits will force compromise and help control government waste. Prudent decisions based on a comprehensive analysis of the interagency partners will ensure our good fiscal stewardship. Also, it will avoid fragmented, duplicative efforts and avoid unnecessary mission creep into the domestic arena.

### **Summary**

Operating in the full glare of television, our government can ill-afford to respond half way around the world to places like Somalia and Rwanda and neglect its own people. Protecting the territory of the United States from all enemies foreign and domestic is the principle task of government.<sup>21</sup> When terror strikes home, Americans expect a prompt and efficient response. Understanding how our government responds allows us to construct practical solutions to meeting the challenges of WMD domestic emergencies.

Effecting a timely and efficient WMD response is not an easy task. Jurisdictional division of responsibility between local, state and federal government's makes this even more cumbersome. The complex nature of American bureaucracy and the interagency institutions that serve them further exacerbates the problem. On one hand, local and state authorities seek to remain autonomous but recognize the need for federal involvement. On the other hand, legal restrictions force the federal partners to abide by a strict set of statutory and regulatory guidelines in order to respond. The two must be carefully coordinated.

Failure to respond in a competent, efficient and effective manner will undoubtedly have serious political consequences. Public opinion and special interests play an important and ever increasing role in crafting domestic policy. The vote is a significant reality check for those that neglect the home front.

Still maturing, the interagency WMD effort has made slow but notable headway while tackling some tough issues. This is an ongoing, evolving process. In the final analysis, the WMD strategy is an economy of force effort that attempts to provide good fiscal stewardship in an era of limited discretionary funding. Only time will tell if those funds were wisely spent.

## ENDNOTES

<sup>1</sup> U.S. President. Executive Order #12938. 14 November 1994, p. 1. (This Executive Order has been renewed every year and was amended again July 1998).

<sup>2</sup> U.S. Congress. Senate. Committee on Government Affairs, Subcommittee on International Security, Proliferation and Federal Services. *The Proliferation Primer*. January 1998, p1.

<sup>3</sup> U.S. Department of Defense. *Integrating National Guard and Reserve Component Support for Response to Attacks Using Weapons of Mass Destruction*. January 1998, p. 7. Note: The Catastrophic Disaster Response Group is comprised of senior representatives of the 29 federal departments that have signed the Federal Response Plan.

<sup>4</sup> Graham T. Allison and Morton H. Halperin. "Bureaucratic Politics: A Paradigm and Some Policy Implications," *World Politics* XXIV Supplement (Summer 1972), p. 40.

<sup>5</sup> U.S. Department of Defense. Report of the National Defense Panel. *Transforming Defense: National Security in the 21<sup>st</sup> Century*. December 1997, pp. 16-17.

<sup>6</sup> D. A. Henderson. *Biological Terrorism*. Original paper presented on January 8, 1998. John Hopkins University. P. 2. (In possession of author).

<sup>7</sup> U.S. Department of Defense. *Domestic Preparedness Program in the Defense Against Weapons of Mass Destruction*. Report to Congress 1 May 1997, p 1. (In possession of author).

<sup>8</sup> New York City is the exception to the rule when it comes to possessing a robust WMD response capability. In many instances they prefer to handle the situation internally but recognize the benefit of federal government intervention.

<sup>9</sup> U.S. Department of Defense. *Domestic Preparedness Program in the Defense Against Weapons of Mass Destruction*. Report to Congress 1 May 1997, p 4.

<sup>10</sup> This contradicts the Economy Act (Section 1535, Title 31 United States Code) that requires federal agencies to provide service on a reimbursable basis. Providing services without reimbursement is viewed as an illegal augmentation of an appropriation.

<sup>11</sup> U.S. President. Presidential Decision Directive 39. 21 June 1995, p 5.

<sup>12</sup> Most state disasters are high visibility with both local and national media coverage. Governors generally take advantage of these opportunities to highlight their concern for

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their constituents via direct media coverage, which may highlight the "personal call" to the President. At the same time, having been a governor, the President, (depending on the party of the governor) may initiate the call to see if assistance is needed. However, FEMA works on a daily basis with the state offices of emergency management to meet the emergency response requirements. Generally, states will submit requests for federal assets through the FEMA Regional Operations Center.

<sup>13</sup> A Senior Interagency Coordination Group (SICG) on terrorism was established to facilitate the interagency coordination of policy issues and program activities in support of Federal initiatives to assist federal, state and local first responders in responding to WMD events. The SICG is composed of senior members from DoD, FEMA, FBI, Public Health Services (PHS), the Environmental Protection Agency (EPA), the Department of Energy (DOE), the Department of Justice (DOJ), the Department of Transportation (DOT), the United States Department of Agriculture (USDA), General Services Administration (GSA) and the National Communication System (NCS).

<sup>14</sup> Crisis management activities include active measures for prevention, immediate incident response, and post-incident response. Activities include command of the operational response as the on-scene manager for an incident in coordination with other Federal agencies and State and local authorities. The FBI provides guidance on the crisis management response in the FBI Nuclear Incident Contingency Plan (classified) and the FBI Chemical/Biological Incident Contingency Plan (classified).

<sup>15</sup> U.S. department of Defense. Proposed CONOPS for the Chemical/Biological Rapid Response Team (C/B-RRT) (Draft). (In possession of the author).

<sup>16</sup> The Federal Response Plan is a time tested, interagency effort (29 agencies) that has been an outstanding means of coordinating relief efforts in the many large-scale disasters that the U.S. has experienced recently. It provides the logical vehicle for the coordination of Federal consequence management operations. The Federal Response Plan implements the authorities given to the Federal Emergency Management Agency under the American emergency management law to assign missions to any Federal Department or agency in support of a disaster or emergency declared by the President. President Clinton also assigned the Federal Emergency Management Agency responsibility to ensure that State government plans are adequate and that their capabilities are tested for nuclear, biological, or chemical terrorist incidents.

<sup>17</sup> Clark L Staten. *Emergency Response to Chemical/Biological Terrorist Incidents*. Emergency Response & Research Institute Web Page.

<sup>18</sup> Ibid.

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<sup>19</sup> Public Law 104-201 Section 1412 Emergency Response Assistance Programs subsection (a) and Chemical-Biological Emergency Response Team section 1414 subsection (a).

<sup>20</sup> U.S. Department of Defense. *Integrating National Guard and Reserve Component Support for Response to Attacks Using Weapons of Mass Destruction*. January 1998, pp. 21-22.

<sup>21</sup> U.S. Department of Defense. Report of the National Defense Panel. *Transforming Defense: National Security in the 21<sup>st</sup> Century*. December 1997, p 25.